UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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Humberto Ferreira,

Plaintiff,

COMPLAINT

-against-

Staffpro, Inc., Staffpro, Inc. d/b/a Ultimate Kitchens,
Haim Rosenblat, Mr. Rosenblat, Jr.

Defendants.
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## JURISDICTION AND VENUE

1. This action arises under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 et. seq.

2. This Court has jurisdiction under 28 U.S.C. §1331 and 29 U.S.C. § 216. Plaintiff further invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367.

3. Venue is proper in the Southern District of New York according to 28 U.S.C. §1391 because the Defendants conduct business there and the cause of action arose there.

## THE PARTIES

4. Plaintiff Humberto Ferreira resides in Ossining, New York.

5. On information and belief, defendant Staffpro, Inc., ("Staffpro") is a corporation formed in the State of New York with its corporate office located at 431 Beach 20th Street, Far Rockaway, N.Y 11691.

6. On information and belief, defendant Staffpro, Inc. d/b/a Ultimate Kitchens ("Ultimate Kitchens") is a corporation formed in the State of New York doing business at 600 Chestnut Ridge Rd, Spring Valley, NY 10977.

7. On information and belief, defendant Haim Rosenblat ("Mr. Rosenblat") is a Principal Executive Officer of Staffpro & Ultimate Kitchens with his principal place of business located at Ultimate Kitchens, and is domiciled in New York State.

8. On information and belief, defendant Mr. Rosenblat, Jr. ("Rosenblat, Jr.") is a Principal Executive Officer of Staffpro & Ultimate Kitchens with his principal place of business located at Ultimate Kitchens, and is domiciled in New York State

## BACKGROUND FACTS

9. Defendant Staffpro is an "employer" under the Fair Labor Standards Act ("FLSA").

10. Defendant Staffpro is an "employer" under the New York Labor Law ("NYLL").

11. Defendant Mr. Rosenblat is an "employer" under the FLSA.

12. Defendant Mr. Rosenblat is an "employer" under the NYLL.

13. Defendant Mr. Rosenblat, Jr. is an "employer" under the FLSA.

14. Defendant Mr. Rosenblat, Jr. is an "employer" under the NYLL.

15. During any period of time whatsoever between September 8, 2010 through September 8, 2016, Defendant Staffpro had the ability to perform one or more of the following actions: (1) hire certain employees of Staffpro & Ultimate Kitchens, (2) terminate the employment of certain employees of Staffpro & Ultimate Kitchens, (3) set the wage rates of certain employees of Staffpro & Ultimate Kitchens, (4) maintain payroll records for certain employees of Staffpro & Ultimate Kitchens, or (5) institute work rules for certain employees of Staffpro & Ultimate Kitchens.

16. During any period of time whatsoever between September 8, 2010 through September 8, 2016, Defendant Mr. Rosenblat had the ability to perform one or more of the following actions: (1) hire certain employees of Staffpro & Ultimate Kitchens, (2) terminate the employment of certain employees of Staffpro & Ultimate Kitchens, (3) set the wage rates of certain employees of Staffpro & Ultimate Kitchens, (4) maintain payroll records for certain employees of Staffpro & Ultimate Kitchens, or (5) institute work rules for certain employees of Staffpro & Ultimate Kitchens.

17. During any period of time whatsoever between September 8, 2010 through September 8, 2016, Defendant Mr. Rosenblat, Jr. had the ability to perform one or more of the following actions: (1) hire certain employees of Staffpro & Ultimate Kitchens, (2) terminate the employment of certain employees of Staffpro & Ultimate Kitchens, (3) set the wage rates of certain employees of Staffpro & Ultimate Kitchens, (4) maintain payroll records for certain employees of Staffpro & Ultimate Kitchens, or (5) institute work rules for certain employees of Staffpro & Ultimate Kitchens.

18. Staffpro is involved in an industry affecting commerce within the meaning of the FLSA.

19. Ultimate Kitchens is involved in an industry affecting commerce within the meaning of the FLSA.

20. Defendant Staffpro's annual revenues exceed $500,000 in the year 2016.

21. Defendant Staffpro's annual revenues exceed $500,000 in the year 2015.

22. Defendant Staffpro's annual revenues exceed $500,000 in the year 2014.

23. Defendant Ultimate Kitchens annual revenues exceed $500,000 in the year 2016.

24. Defendant Ultimate Kitchens annual revenues exceed $500,000 in the year 2015.

25. Defendant Ultimate Kitchens annual revenues exceed $500,000 in the year 2014.

26. The business activities of the Defendants are related and performed through unified operation or common control for a common business purpose and constitute an enterprise within the meaning of the FLSA.

27. Plaintiff individually engaged in interstate commerce within the meaning of the FLSA by regularly using the instrumentalities of interstate commerce to perform his work, which was directly essential to defendants' business.

28. Plaintiff's job responsibilities while working at Staffpro & Ultimate Kitchens included

manufacturing kitchen countertops by using materials and tools that were purchased from outside the state of New York to create products that were sold and delivered to customers outside the State of New York.

29. Staffpro failed to keep accurate and sufficient payroll and time records, as required by law.

30. On information and belief, Staffpro and Ultimate Kitchens are a joint employer under the FLSA and NYLL.

**Plaintiff Humberto Ferreira**:

31. Plaintiff Humberto Ferreira started working for Defendant Staffpro as a fabricator in the 2004 calendar year.

32. Plaintiff Humberto Ferreira, was employed by Defendant Staffpro during the 2016 calendar year.

33. Plaintiff Humberto Ferreira, was employed by Defendant Staffpro during the 2015 calendar year.

34. Plaintiff Humberto Ferreira, was employed by Defendant Staffpro during the 2014 calendar year.

35. Plaintiff Humberto Ferreira, was employed by Defendant Staffpro during the 2013 calendar year.

36. Plaintiff Humberto Ferreira, was employed by Defendant Staffpro during the 2012 calendar year.

37. Plaintiff Humberto Ferreira, was employed by Defendant Staffpro during the 2011 calendar year.

38. Plaintiff Humberto Ferreira, was employed by Defendant Staffpro during the 2010 calendar year.

39. Plaintiff Humberto Ferreira, was employed by Defendant Ultimate Kitchens during the 2016 calendar year.

40. Plaintiff Humberto Ferreira, was employed by Defendant Ultimate Kitchens during the 2015 calendar year.

41. Plaintiff Humberto Ferreira, was employed by Defendant Ultimate Kitchens during the 2014 calendar year.

42. Plaintiff Humberto Ferreira, was employed by Defendant Ultimate Kitchens during the 2013 calendar year.

43. Plaintiff Humberto Ferreira, was employed by Defendant Ultimate Kitchens during the 2012 calendar year.

44. Plaintiff Humberto Ferreira, was employed by Defendant Ultimate Kitchens during the 2011 calendar year.

45. Plaintiff Humberto Ferreira, was employed by Defendant Ultimate Kitchens during the 2010 calendar year.

46. Plaintiff Humberto Ferreira did not have the authority to hire or fire employees, did not supervise employees, and did not use his independent judgment or discretion while working for Staffpro.

47. Plaintiff Humberto Ferreira did not have the authority to hire or fire employees, did not supervise employees, and did not use his independent judgment or discretion while working for Ultimate Kitchens.

48. At all relevant times herein, plaintiff Humberto Ferreira was not exempt from the FLSA.

49. Defendants paid Plaintiff Humberto Ferreira by check and in cash.

50. Defendants paid Plaintiff Humberto Ferreira an hourly wage "on the books" and an equal amount in cash as the other half of his salary.

51. During the 2010 calendar year, Plaintiff Humberto Ferreira worked approximately forty-three hours and fifteen minutes per workweek.

52. During the 2010 calendar year, Plaintiff Humberto Ferreira worked approximately forty-three workweeks accounting for sick time, vacation time, holidays and personal time off from work.

53. In 2010, Defendants did not pay Plaintiff Humberto Ferreira an overtime premium for hours worked in excess of forty hours in a work week.

54. During the 2011 calendar year, Plaintiff Humberto Ferreira worked approximately forty-three hours and fifteen minutes per workweek.

55. During the 2011 calendar year, Plaintiff Humberto Ferreira worked approximately forty-three workweeks accounting for sick time, vacation time, holidays and personal time off from work.

56. In 2011, Defendants did not pay Plaintiff Humberto Ferreira an overtime premium for hours worked in excess of forty hours in a work week.

57. During the 2012 calendar year, Plaintiff Humberto Ferreira worked approximately thirty workweeks in which he worked approximately forty-four hours.

58. In 2012, Defendants did not pay Plaintiff Humberto Ferreira an overtime premium for hours worked in excess of forty hours in a work week.

59. During the 2013 calendar year, Plaintiff Humberto Ferreira worked approximately thirty workweeks in which he worked approximately forty-four hours.

60. In 2013, Defendants would not pay Plaintiff Humberto Ferreira an overtime premium for hours worked in excess of forty hours in a work week.

61. During the 2014 calendar year, Plaintiff Humberto Ferreira worked approximately thirty workweeks in which he worked approximately forty-four hours.

62. In 2014, Defendants did not pay Plaintiff Humberto Ferreira an overtime premium for hours worked in excess of forty hours in a work week.

63. During the 2015 calendar year, Plaintiff Humberto Ferreira worked approximately thirty workweeks in which he worked approximately forty-four hours.

64. In 2015, Defendants did not pay Plaintiff Humberto Ferreira an overtime premium for hours worked in excess of forty hours in a work week.

65. Defendants paid Plaintiff Humberto Ferreira by the hour.

66. The Defendants never provided Plaintiff Humberto Ferreira a written notice of his pay rate and the pay day.

67. The Defendants never provided Plaintiff Humberto Ferreira with an accurate wage statement when they provided Plaintiff Humberto Ferreira with his compensation.

68. Plaintiff Humberto Ferreira regularly worked for Defendants from Monday through Friday.

69. Defendants did not pay Plaintiff Humberto Ferreira for all hour worked.

**AS AND FOR A FIRST CAUSE OF ACTION**
**(Failure to pay overtime - Federal & State)**
**29 U.S.C §201 et. seq. & 12 NYCRR §142-2.2**

70. Plaintiff repeats, re-alleges and incorporates each and every allegation as though fully set forth herein.

71. Defendants have not compensated Plaintiff with overtime premium pay for hours worked in excess of 40 per week.

72. Pursuant to the FLSA & NYLL, Plaintiff is entitled to one and one-half of their regular rate of pay for each hour worked in excess of 40 hours per workweek.

73. Defendant failed to pay Plaintiff overtime for all overtime hours worked.

74. Defendant willfully refused and failed to compensate Plaintiff for overtime work, causing damage to Plaintiff.

**AS AND FOR A SECOND CAUSE OF ACTION**
**(Wage Theft Prevention Act)**

75. Plaintiff repeats, re-alleges and incorporates each and every allegation as though fully set forth herein.

76. Pursuant to the Wage Theft Prevention Act, New York Labor Law, §195, Defendants willfully failed to furnish Plaintiff with a required notice containing the following information:

    i. the rates or rates of pay and basis thereof,

    ii. whether paid by the hour, shift, day, week, salary, piece, commission or other allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances;

iii. the regular pay designated by the employer in accordance with NYLL §191;

iv. the name of the employer;

v. Any "doing business as" names used by the employer;

vi. The physical address of the employer's main office or principal place of business, and a mailing address, if different;

vii. The telephone number of the employer.

77. Defendants willfully failed to furnish Plaintiff with an accurate statement of wages as required by NYLL §195(3), containing the dates of work covered by that payment of wages; name of the employee; name of the employer; address and phone number of employer; rate or rates of pay and basis thereof; whether paid by hour, shift, day, week, salary, piece, commission, or other; gross wages; hour rate or rates of pay, and overtime rates of pay; the number of hours worked, including overtime hours; deductions, allowances, and net wages.

78. Due to Defendant's violation of NYLL §195(1), Plaintiff is entitled to recover from Defendants liquidated damages of $50 per workweek that the violation occurred, up to a maximum of $2,500, reasonable attorney fees, and costs and disbursements of this action, pursuant to NYLL § 198(1-b).

**AS AND FOR A THIRD CAUSE OF ACTION**
**(Failure to pay wages)**
**NY Lab. Law §191**

79. Plaintiff repeats, re-alleges and incorporates each and every allegation as though fully set forth herein.

80. Under NYLL §191, an employer is required to pay an employee within one week of the services performed by the employee.

81. Defendants failed to pay Plaintiffs their wages as required by NYLL §191 by not paying all wages owed within the statutory time period.

82. Because of Defendants unlawful withholding of wages, Plaintiffs suffered harm.

**AS AND FOR A FOURTH CAUSE OF ACTION**
**(Breach of contract)**

83. Plaintiff repeats, re-alleges and incorporates each and every allegation as though fully set forth herein.

84. Plaintiff and Defendant established a contract for services by and through an employer-employee relationship.

85. Plaintiff rendered services to Defendants under this contract.

86. Defendants breached the contract by not paying Plaintiff the money for his services.

87. By Defendants breach, Plaintiff suffered harm.

## JURY DEMAND

88. Plaintiff demands trial by jury.

WHEREFORE, Plaintiff respectfully prays that this Court enter a judgment:

i. Directing Defendants to pay Plaintiff an overtime premium pay for each hour worked more than 40 per week pursuant to 29 U.S.C. §216 and NYLL;

ii. Directing Defendants to pay Plaintiff additional amounts as liquidated damages due to Defendants' willful failure to pay overtime pay pursuant to both 29 U.S.C. §216 and New York Labor Law.

iii. Directing Defendants to pay any and all unpaid wages due to Plaintiff and an equal amount as liquidated damages pursuant to the NYLL and the supporting NY Department of Labor Regulations.

iv. Directing Defendants to pay damages to Plaintiff under the Wage Theft Prevention Act of $50 per workday, up to $5,000 per plaintiff and $250.00 per workweek up to a maximum of $5,000.00 per year, as liquidated damages for failing to provide Plaintiff with an accurate pay stub as required by the Wage Theft Prevention Act, plus reasonable counsel fees, and costs, and disbursements.

v. Directing Defendants to pay Plaintiff's costs and attorney fees, pursuant to the FLSA and New York Labor Law;

vi. Prejudgment interest, post-judgment interest, costs and disbursements, and

vii. such other and further relief as this Court deems just and equitable.

Dated: White Plains, New York
November 24, 2016

EL-HAG & ASSOCIATES, P.C

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